

REMARKS

Claims 1-22 and 24-27 are pending and stand rejected. In response, claims 1-5, 8-13, 16-20, and 24-27 are amended, claim 22 is canceled, and claim 28 is added. Claims 1-21 and 24-28 are pending upon entry of this amendment.

35 U.S.C. § 112 Rejection

Claims 1, 9, and 16 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the claims are allegedly unclear in referencing “one of the plurality of files,” “a plurality of files,” “a specific file,” and “the file.”

Applicant does not believe the claims were indefinite, but has amended the claims in the interest of expediting prosecution. Specifically, the claims are now amended to add a hyphen to the phrase “non-application-specific file attribute manager” in the first element to clarify that it does not refer to a specific file. In addition, the “indexing” element is amended to recite “indexing specific file attributes gleaned from specific files according to contents of the specific files.” Thus, the indexing element indicates that attributes of specific files (i.e., individual files) are indexed according to the contents of the files from which they were gleaned. In addition, other elements of the claim have been amended to clarify that operations are performed with respect to an “examined” one of the plurality of files.

Applicant respectfully submits that claims 1, 9, and 16 now clearly recite that there are a plurality of files, attributes gleaned from specific files are indexed according to the contents of the specific files, and one of the plurality of files is examined. The dependent claims are amended to conform with their respective base claims. Certain dependent claims, e.g. claim 6, also refer to “a selected file” that is not necessarily the same as the examined file.

35 U.S.C. § 101 Rejection

Claims 1-22 and 24-27 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Specifically, the claims allegedly do not encompass tangible subject matter and/or embodiments which fall within a statutory category. Examiner states that the claims fail to provide a “useful, concrete and tangible result” since they fail to recite a final step wherein the status of the gleaned file attributes is utilized. Applicant respectfully traverses this rejection.

The claim invention encompasses embodiments falling within statutory categories. Independent claims 1, 9, and 16 respectively recite a method, computer-readable medium, and computer system. In addition, the claims provide a useful, concrete and tangible result. The claimed invention has a well established and credible utility as described in the “Background Art” section of the application. Moreover, the claimed invention produces a concrete result because, at the least, the claimed invention leads to a substantially repeatable result. See MPEP 2106 IV.C.2.2.b (defining a “concrete result”).

Further, the claimed result of “determining a status of the examined one of the plurality of files responsive to analyzing the gleaned file attributes” is tangible. Contrary to Examiner’s assertion, there is no requirement that the results of the determination be utilized. The status determination itself is at least momentarily fixed for recording and reporting purposes, and the courts have recognized that such determinations are statutory under § 101. For example, in the State Street decision cited by Examiner the United States Court of Appeals for the Federal Circuit stated that

the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces a “useful, concrete and tangible result” – a final share price **momentarily fixed for recording and reporting purposes** and even accepted and relied upon by regulatory authorities and in subsequent trades.

State Street v. Signature, 149 F.3d 1368, 1373 (Fed. Cir. 1998) (emphasis added). Here, as in State Street, the final result is a tangible determination that can used for recording,

reporting, and other purposes. Moreover, dependent claims 24 and 25 recite specific uses of the claimed determination.

Claims 16-22 and 24-27 are also rejected under § 101 because the claimed invention is allegedly directed to “a computer system” comprised of a plurality of modules which are only “configured” to perform certain functions. Examiner states that the claim limitations are non-statutory because the claim limitations fail to require that the modules perform the functions and therefore do not provide a “useful, concrete and tangible result.” Examiner cites to State Street and MPEP 2106 in support of this rejection.

Applicant respectfully traverses this rejection because there is no basis for it in the law or MPEP. State Street did not address these issues and Examiner’s reliance on it is misplaced. The MPEP states that certain claim language that does not limit a claim to a particular structure may present issues. MPEP 2106 II. C. However, this type of language is not present here. Claim 16 uses the phrase “configured to” to describe the structure of modules in a computer system. There is no valid reading of the claims where the functions for which the modules are “configured” could be considered optional. Claims 24-27 are method claims depending from claim 1 and do not use the “configured to” language.

For at least these reasons, Applicant respectfully submit that the claimed invention provides a useful, concrete, and tangible result and is statutory. If Examiner maintains this rejection, Applicant requests that Examiner provide a detailed explanations of why the claims are non-statutory.

35 U.S.C. § 103 Rejection

Claims 1-3, 6, 8-11, 14, 16-18, 21, and 24-27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pisello et al. (U.S. Patent No. 5,495,607) in view of Stupek et al. (U.S. Patent No. 5,586,304). Claims 4, 12, and 19 stand rejected under § 103 as being unpatentable over Pisello in view of Stupek and in further view of Fischer (U.S. Patent No. 5,694,569). Claims 5, 13, and 20 stand rejected under § 103 as being unpatentable over Pisello in view of Stupek and in further view of Baker (U.S. Publication No. 2003/0233352). Claims 7 and 15 stand rejected under § 103 as being unpatentable over

Pisello in view of Stupek and in further view of Chino (U.S. Publication No. 2002/0046207). Applicant respectfully traverses these rejections.

Claim 1 currently recites:

1. A computer implemented method for gleaning file attributes independently of file format, the method comprising the steps of:
 - ...
 - the file attribute manager indexing specific file attributes gleaned from specific files according to the contents of the specific files, the specific file attributes being stored as ones of the plurality of records in the database;
 - ...
 - analyzing the gleaned file attributes gleaned from the examined one of the plurality of files**, the gleaned file attributes having been retrieved from the at least one record associated with the examined one of the plurality of files; and
 - determining a status of the examined one of the plurality of files responsive to analyzing the gleaned file attributes.

The other independent claims recite similar features. The claimed invention thus relates to analyzing attributes gleaned from a file in order to determine a status of the file.

Pisello discloses a network management system that has a virtual catalog overview of files distributed across a network domain. Examiner acknowledges that Pisello fails to expressly disclose the steps of analyzing gleaned attributes and determining a status, but states that these steps are disclosed by Stupek.

Stupek, however, neither teaches nor suggests the claimed analyzing and determining steps. Stupek discloses a method for use in upgrading software of a computer from an existing version to a later version. To this end, Stupek includes a management information database (MIB) that describes the name and version number of each piece of software on a server, its location in the server, and the date and time of software's release. Col. 3, lines 14-25. An upgrade advisor compares an upgrade package for software to the information in the MIB and, if appropriate, upgrades the software. Col. 4, lines 1-20.

Stupek thus utilizes attributes of **software**, and not attributes of **files**, as claimed. Col. 9, lines 50-67 of Stupek describes the comparison performed to determine whether to upgrade software. The table shown therein illustrates that the MIB contains the name, version name, and version of a software package, but does not include any attributes

gleaned from **files**. In paragraph 16 of the Office Action of May 3, 2007, Examiner states that “the prior art of STUPEK discloses a method wherein file attributes such as the name, version number, and a **timestamp**, which have been gleaned from a file, are compared and verified” (emphasis added). This statement is at least partially incorrect because Stupek does not disclose or suggest any operations involving timestamps, and the attributes are not gleaned from files. Rather, the reference discloses checking the version number of a software package. It is true that software packages comprise files. Still, Stupek never distinguishes the software upgrade package from any files contained within it. Moreover, the attributes Stupek uses are unlikely to correspond to the attributes of the files within the package.

Accordingly, a person of ordinary skill in the art considering the network management system of Pisello and the software upgrading technology of Stupek would not find the claimed invention obvious. Assuming for purposes of argument that Pisello gleans files attributes, Stupek does not teach any analysis or status determination based on gleaned file attributes.

The other references fail to remedy the deficiencies of Pisello and Stupek. Fischer discloses a method for protecting a volatile file using a single hash. Baker discloses a method of scanning media for licensed files. Chino discloses an information distribution system for distributing desired information answering a request on a display. None of these references teach or suggest analyzing file attributes or making a determination as claimed. For at least these reason Applicant submits that the independent claims are patentable over the cited references.

Claims 2, 10, and 17 are amended to recite that “specific types of file attributes are gleaned from a specific file as a function of a protocol according to which the specific file is transmitted” (quoting claim 1). Support for these amendments are found throughout the specification, including at page 6, lines 1-18.

Claims 2, 10, and 17 are rejected primarily based on Pisello. Table 2 of this reference shows a virtual catalog listing that shows the source, name, size, last revision date, and person making the last revision for a file. However, this table does not teach or

suggest that types of file attributes are gleaned from a file as a function of a protocol according to which the file is transmitted. Instead, the table illustrates that the same attributes are collected for all files, regardless of any protocol that was used to “transmit” the file. Further, the actual files are not transmitted in Pisello for the reasons described in Applicant’s previous Amendment.

Claims 24 recites blocking the examined file responsive to a determination that the file is malicious. Claim 25 recites not blocking the file responsive to a determination that it is legitimate. These claims are rejected primarily based on Stupek. Stupek shows determining whether to upgrade a software package, but does not determine whether a particular upgrade is malicious or legitimate. There is no basis for equating a malicious/legitimate determination with what is shown in Stupek. Furthermore, Examiner’s statements in support of these rejections do not provide a coherent explanation of why the claims are rejected.

Accordingly, Applicant respectfully submits that the pending claims are allowable over the cited references and request allowance of the claims. If Examiner believes that direct contact with the Applicant’s attorney will advance the prosecution of this case, Examiner is encouraged to contact the undersigned as indicated below.

Respectfully submitted,
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